



DEPARTMENT OF THE NAVY  
OFFICE OF THE CHIEF OF NAVAL OPERATIONS  
WASHINGTON, D.C. 20350

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IN REPLY REFER TO

OPNAVINST 4000.36F  
OP-422J1  
Ser 1616P42  
26 JUN 1970

OPNAV INSTRUCTION 4000.36F

From: Chief of Naval Operations  
To: Distribution List

Subj: Department of the Navy procedures for processing export license applications for munitions list items and related export control matters

Ref: (a) International Traffic in Arms Regulations (ITAR), Department of State, Revised August 1969 (22 CFR, Chapter I, Subchapter M) (NOTAL)  
(b) OPNAV Instruction 005510.48C of 24 Nov 1967 (NOTAL)  
(c) DOD Instruction 5030.28, Munitions Control Procedures for U.S. Munitions List Export License Applications Referred to DOD by Department of State, 10 March 1970 (NOTAL)

Encl: (1) OPNAV FORM 4000/21

1. Purpose. This instruction provides current policies on munitions exports, criteria and procedures for clearance of export licenses, and information on related export control matters. It delineates requirements and responsibilities within the Department of the Navy for reviewing and presenting the Department's position to the Office of the Assistant Secretary of Defense, International Security Affairs, Strategic Trade and Disclosure (OASD/ISA/ST&D) on munitions export license applications referred to the Department of the Navy by the Department of State.

2. Cancellation. OPNAV Instruction 4000.36E of 22 September 1967 is hereby cancelled.

3. Scope. Munitions control procedures concern those requests from U.S. firms or other entities for Department of State export licenses, which are referred to the Department of Defense (DOD) as numbered munitions cases for concurrence or recommendations. Such requests pertain to defense articles and services, as described in reference (a). These articles are designated as arms, ammunition, and implements of war, and may consist of manufacturing license and technical assistance agreements, material, and/or technical data. Munitions export controls are applicable whether a disclosure of technical data is to be by oral, visual or documentary means. An export of technical data is made whenever this data is: (a) mailed or shipped outside the United States; (b) carried by hand outside the United States; (c) disclosed through foreign visits by U.S. citizens (including participation in briefings, symposia, or visits to foreign embassies in the United States); or (d) disclosed to foreign

nationals in the United States, through factory visits, participation in briefings or symposia, or through any other means. The export of technical data by the U.S. Government is not subject to these regulations and an export license is not required when all aspects of the transaction are handled by a U.S. Government agency. Changes to the Munitions List are effected by the Secretary of State, with the concurrence of the Secretary of Defense. (This instruction does not cover material or services provided by the U.S. Government as military assistance grant aid or sold under foreign military sales procedures.)

#### 4. Policy.

a. Reference (a) states: "Equipment on the U.S. Munitions List shall not be exported from the United States until a license has been obtained from the Department of State, or it is otherwise exempt under other provisions of this subchapter".

b. The DOD policy, as outlined in reference (c), states: "It is the policy of the DOD consistent with overall national policy and the protection of security interests of the United States to permit the export to friendly foreign nations of munitions articles and services and related technical data including manufacturing license and technical assistance agreements".

c. In order to ensure the security of the United States, and in the interest of furthering world peace, control of the export of arms and implements of war described in reference (a) is exercised on a case-by-case basis. Applications for the export of these items are referred to the Department of the Navy as numbered munitions cases by the Department of State, for recommendations and/or concurrence. Recommendations and comments will be based, inter alia, on the following factors:

(1) Specific identification and the end use of the item proposed for export.

(2) Classification. Security policy interests and/or implications, including the current security classification, if any, of the item involved. In this connection, export applications concerning material or weapon systems will be reviewed to determine whether a resultant sale of the item(s) or system(s), although perhaps unclassified, would require the disclosure of classified information at a later date for operation, maintenance, or production. If disclosure of classified information will be required, the case will be considered in accordance with the guidance contained in reference (b), and on the basis of the highest classification.

(3) Military advantage or detriment to the United States, and impact on U.S. Government policy, including consistency with military objectives, plans, and operational requirements. This includes consideration of force goal objectives, the operational compatibility with present in-country equipment, standardization of in-country equipment, and the control of the introduction of sophisticated equipments into economically under-developed countries.

(4) The ability of the country to acquire, assimilate, operate, and maintain the equipment proposed for export.

(5) Copyright, patent, and/or other proprietary rights involved, and the U.S. Government interest therein.

(6) Impact on military assistance programs, sales, loans or grants, co-development, co-production, and data exchange agreements.

(7) Impact on DOD research and development, production, procurement, and supply for the Department of the Navy, including whether the use of U.S. Government-owned tooling or industrial facilities is involved. In those cases where export of material or services may have an adverse effect on the logistic support of U.S. forces or the U.S. production base, a statement describing this effect will also be provided.

(8) Significance of the specific item proposed for export in relation to the state-of-the-art or advanced technology. Relationship of proposed export to technological developments or programs in the country of destination, and the latter's capability to operate and maintain the equipment or utilize the data.

(9) Conformance with the Armed Services Procurement Regulations (ASPR), the ITAR (reference (a)), National Security Decision Memoranda, etc. All munitions cases will be examined carefully against the criteria set forth in reference (b), to ensure that approval of unclassified munitions cases will not inadvertently commit the United States to a future release of classified information or material. The exportation of unclassified information or material related to classified items will be approved only after approval by the cognizant agency to release such related classified items as may later be required. If classified end items of equipment or technical data are identified as ultimately being involved in an application, even though originated as an unclassified munitions case, the following will apply:

(a) Within the Limits of Reference (b). The cognizant office reviewing the request will bring this matter to the attention of Chief of Naval Operations (OP-42). The office concurring in the approval of such a request will also certify that the eventual disclosure of classified information meets the criteria of reference (b). Concurrence in such cases indicates that the Department of the Navy has considered all classified end items or data involved and is prepared to approve their release.

(b) In Excess of the Limits of Reference (b). If the eventual disclosure of classified information exceeds the limits set forth in reference (b), the reviewing office will notify the Chief of Naval Operations (Op-42) specifically where the policy has been exceeded, and forward an accompanying statement that the reviewing office does not wish to sponsor the required exception; or request the Chief of Naval Operations (Op-42) to forward an interim reply to OASD/ISA/ST&D if desiring to sponsor the exception, indicating that

the Department of the Navy sponsored request for exception to the National Disclosure Policy is being acted on by the National Disclosure Policy Committee. Interim disclosures of related unclassified information or information of a lower classification level will not be authorized, pending resolution of the case by the National Disclosure Policy Committee.

(c) At the present time, approximately 2,000 munitions export licenses are being staffed by the Office of Munitions Control, Department of State, each month. Of these, approximately 300 to 400 are referred to DOD for review by the appropriate military services. It is obvious therefore, that great care must be taken in processing individual cases. There have been instances where the export of a complete system has been denied; however, the export of certain components was approved, and these components taken collectively over a period of time comprised the entire system previously denied.

5. Action. The Chief of Naval Operations (Op-42) is the central point of contact for all matters related to munitions export controls. Op-42 will prepare and coordinate the Department of the Navy position on all export license applications, and forward this position to OASD/ISA/ST&D. In order to adequately review these munitions cases, comments and recommendations will be requested from the appropriate offices within OPNAV, and normally from the appropriate technical commands. Procedures for reviewing munitions cases are as follows:

a. Munitions cases relating to equipment or data under the cognizance of the U.S. Marine Corps will be forwarded directly to the Commandant, U.S. Marine Corps (CMC) for review.

b. Munitions cases relating to equipment and data under the cognizance of the Office of Naval Research (ONR) and other agencies (except the Naval Material Command) reporting directly to the Secretary of the Navy or the Chief of Naval Operations will be forwarded directly to those commands for review.

c. Munitions cases relating to equipment and data under the cognizance of the Naval Material Command (NMC) will be forwarded directly to the Chief of Naval Material (CNM), with a copy to the appropriate systems command. When only one copy of the case material is available, this material will be forwarded to the cognizant systems command, with a copy of the covering letter to CNM. CNM will review and consolidate all comments and recommendations received from component commands, and forward a coordinated NMC position to the Chief of Naval Operations (Op-42).

d. Many munitions cases relate to equipments not in the Department of the Navy inventory. These cases will be forwarded to the technical command most concerned with the technology involved.

e. In order to conform to the staffing deadline established by reference (c), comments and recommendations from component commands must reach the Chief of Naval Operations within fourteen (14) working days from date of receipt. If the reply cannot be forwarded by the required date, an interim reply will be submitted citing justification for the delay and an indication as to when a reply can be expected.

f. The form attached as enclosure (1) will be utilized for submitting comments and recommendations to the Chief of Naval Operations. Even if there is no objection to the export, all questions on this form must be answered in order to provide the Chief of Naval Operations with complete information upon which to justify the final position. Failure to respond to each item on enclosure (1) will necessitate the return of the case with attendant delays in furnishing a Department of the Navy position in a given case. Munitions export case review forms (OPNAV Form 4000/21) may be requisitioned on DD Form 1348 or DD Form 1348M from the Forms and Publications Section (Code 513.12), Naval Station, Building 176-5, Washington, D. C. 20390.

  
E. R. CRAWFORD  
By direction

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FROM:

TO:

VIA:

SUBJ: DEPARTMENT OF STATE EXPORT LICENSE APPLICATION, MUNITIONS CASE NUMBER \_\_\_\_\_

REF: (a)

ENCL: (1)

1. In response to reference (a), the following comments and recommendations concerning the export license application (Enclosure 1) are submitted:

a. COGNIZANCE. \_\_\_\_\_ has primary cognizance of this case. Comments should also be solicited from \_\_\_\_\_.

b. IDENTIFICATION. Provide complete identification of the equipment or data proposed for export. If not USN equipment, discuss similarities to USN equipment.

c. SECURITY CLASSIFICATION. Provide classification of the documents, equipment, related technical data, and operational and maintenance information (see Para 4.C (2) of OPNAVINST 4000.36F).

d. PRODUCTION STATUS. Indicate if equipment is in production, research and development, or obsolete. Also comment on the effect of the proposed export on USN procurement schedules.

e. PREVIOUS RELEASES. Indicate if this material or data has been previously released to the country consignee and by what method.

f. STATE-OF-THE-ART. Indicate if the proposed export involves the latest State-of-the-Art.

g. PROPRIETARY RIGHTS. Indicate if U.S. Government proprietary rights or USN R&D funds are involved. Also indicate if Government-owned tooling will be involved.

h. ASPR & ITAR. If the proposed export does not conform to the ASPR and ITAR, so state.

i. RECOMMENDATION: Provide a positive statement whether the USN should recommend approval or denial of the export license application. Specific comments concerning the advantages or disadvantages must support the position recommendation.

Enclosure (1)